HARVARD LAW REVIEW.

Published monthly, during the Academic Year, by Harvard Law Students.

SUBSCRIPTION PRICE, $2.50 PER ANNUM . . . . . 35 CENTS PER NUMBER.

RESPONSIBILITY OF NATIONAL BANK DIRECTORS. — The duties of a director of a national bank, and the degree of watchfulness over the details of the business required of him by law, were passed upon by the United States Supreme Court in the case of *Briggs* v. *Spaulding*, 141 U. S. 132. It was there laid down that a director is not bound to make an actual examination of the accounts of the bank, and that he is not liable to the corporation for losses which he could have averted only by making such an examination. The contrary doctrine prevails in some States; and even in the federal courts considerable dissatisfaction with this view of the Supreme Court has been expressed. The rule of *Briggs* v. *Spaulding*, *supra*, was followed, in the recent case of *Warner* v. *Penoyer*, 82 Fed. Rep. 181, but with evident bad grace. From the standpoint of the business man, however, the rule must be considered salutary. Unfortunate results come from looking upon a bank director as a trustee for the bank, or for its creditors. Analysis of this position discloses difficulties both technical and practical; for if there is a trust it is technically hard to find any trust *res;* and in practice it is impossible to demand of a director the time and care which are demanded of a trustee. The duty owed by the director to the corporation, according to the better view, is a legal one, the duty of care under all the circumstances of his office; and comparison of this legal duty with the equitable duty of a trustee seems vain except as a means of emphasizing the difference.

Applying the common-law test, one can hardly escape the conclusion that the average man would not feel it incumbent upon him as director of a bank to inspect the discount register and the general ledger. Matters concerning the policy of the bank, the loans contracted, and the collateral received, call for his general supervision; but in fulfilling this duty he is ordinarily entitled to rely upon the statements made by the officers of the bank, without verifying them in detail in the accounts.

The practice of business is to be considered, not as conclusive, but as evidence of what is reasonable; and business practice demands no such personal examination. Merely to compare cash balances with book balances and to examine collateral securities would take a director more time than can in fairness be asked; and if in addition he were required to make a study of the receivable paper and the specific entries in the ledger no business man would accept the office. In supporting the rule of *Briggs* v. *Spaulding, supra*, it must be remembered, moreover, that the rule is not dogmatic; it requires a consideration of all the circumstances of each case; and when circumstances give rise to suspicion it would hold a director culpable in not setting on foot an investigation. Only so long as he acts in good faith can he be protected from liability.

DECLARATIONS OF PHYSICAL CONDITION. — Perhaps no branch of the law of evidence has had such an important development in recent years as the exception to the rule against hearsay in respect to declarations by a person as to his mental or physical condition. This exception, like all exceptions to hearsay, is based on historical grounds rather than on any broad principles of reasoning, and unfortunately its development in our different States has not been uniform. In a recent case in the New Jersey Court of Appeals it was stated that the declarations by the plaintiff of his symptoms made to a physician in order that the latter might give his opinion as witness for the plaintiff, are not admissible. The action for injuries by the plaintiff had already been commenced. *Lambertson* v. *Consolidated Co.*, 38 Atl. Rep. 683. The court says that statements made to a physician for the purpose of treatment derive "credibility beyond hearsay" because of the strong incentive of a patient to speak truthfully to one about to administer remedies to him. But when the physician is merely to give his opinion for the patient, all incentive to truthfulness is gone, and, instead, "self-interest becomes a motive for distortion, exaggeration, and falsehood."

The Court seems to assume that declarations of symptoms are admissible only when made to a physician for the purpose of treatment; a view which, it must be admitted, has grown up in several States, (see, for example, *Grand Rapids R. R.* v. *Huntley*, 38 Mich. 537.) The better rule, however, seems to be that declarations of physical or mental condition made to any one are admissible as evidence of such condition. (Greenleaf, 15th ed., § 102.) As to the objection that the declarations were *post litem motam*, that rule, as a rule of exclusion, seems to have been uniformly applied only to declarations as to matters of pedigree or of public and general interest. That the statements, then, in the present case were made for the purpose of enabling the physician to testify for the declarant, and that an action had already been commenced by the latter, would appear rather to detract from the weight of such evidence than to exclude it altogether. The motive for fraud or falsehood in making the declarations would vary according to the circumstances of each case, and the jury, under proper instructions, would judge of the credibility of the evidence.

A LIBERAL CONSTRUCTION OF A MECHANIC'S LIEN LAW.—The object of the Mechanic's Lien Law is "to make the pay of those whose labor has gone to enhance the value of the erection, prompt and secure in all